



essent Employee Guide to

EMTALA

“An ESSENTial part of caring for our patients”



Hospital EMTALA Obligations

The Emergency Medical treatment and Labor Act (EMTALA) requires all hospitals with dedicated emergency departments to provide a medical screening examination (MSE) to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition (EMC) regardless of the individuals' ability to pay for the service.

Furthermore, if the MSE reveals that there is an EMC present, then the hospital has an obligation to provide stabilizing treatment or an appropriate transfer to another facility. The requirements for an *appropriate* transfer are outlined later in this document.

The enforcement of EMTALA is a complaint driven process. The investigation of a hospital's policies/procedures and processes and any subsequent sanctions are initiated by a complaint. If the results of a complaint investigation indicate that a hospital violated EMTALA, the hospital may be subject to termination of its provider agreement and/or the imposition of civil monetary penalties (CMPs). CMPs may be imposed against hospitals or individuals for EMTALA violations.

Each provider's agreement with Medicare requires that they comply with EMTALA. Hospitals are required to adopt and enforce policies and procedures to ensure compliance with the requirements of EMTALA. ***Noncompliance with EMTALA requirements will lead The Centers for Medicare and Medicaid Services (CMS) to initiate procedures for termination from the Medicare program.*** Noncompliance may also trigger the imposition of civil monetary penalties by the Office of the Inspector General.

A hospital has fulfilled its EMTALA obligation when a physician or other qualified medical person (QMP) has made a decision:

- That no emergency medical condition exists (even though the underlying medical condition may persist);
- That an emergency medical condition exists and the individual is appropriately transferred to another facility; or
- That an emergency medical condition exists and the individual is admitted to the hospital for further stabilizing treatment.

Notice to Patients

EMTALA requires the posting of signs which specify the rights of individuals with emergency medical conditions (EMCs) and women in labor. To comply with the requirements hospital signage must, at a minimum:

- Specify the rights of individuals with EMCs (including women in labor) who come to the emergency department for health care services;
- Indicate whether the facility participates in the Medicaid program;
- The wording of the sign(s) must be clear and in simple terms and language(s) that are understandable by the population served by the hospital; and
- The sign(s) must be posted in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment (e.g., entrance, admitting area, waiting room, treatment area).

Patient Registration

Under EMTALA, hospitals are allowed to follow reasonable registration procedures for individuals who come to the emergency department. For example, a hospital may ask the individual for an insurance card, so long as doing so does not delay the medical screening examination. In addition, the hospital may seek other information about an individual (but not payment) from the individual's health plan such as medical history. And, in the case of an individual with an emergency medical condition, once the hospital has conducted the medical screening examination and has initiated stabilizing treatment, it may seek authorization for all services from the plan, again, as long as doing so does not delay the implementation of the required MSE and stabilizing treatment.

- A participating hospital may not delay providing an appropriate MSE in order to inquire about the individual's method of payment or insurance status.
- A participating hospital may not seek, or direct an individual to seek, authorization from the individual's insurance company for screening or stabilization services until after the hospital has provided the appropriate medical screening examination, and initiated any further medical examination and treatment that may be required to stabilize the EMC.
- An emergency physician or non-physician practitioner is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services.

Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. The registration process permitted in the dedicated ED typically consists of collecting demographic information, insurance information, whom to contact in an emergency and other relevant information. ***Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.***

In situations involving a transfer, these requirements apply equally to both the referring and the receiving (recipient) hospital. Therefore, it may be a violation if the receiving hospital delays acceptance of the transfer of an individual with an unstabilized EMC pending receipt or verification of financial information. It would not be a violation if the receiving hospital delayed acceptance of the transfer of an individual with a stabilized EMC pending receipt or verification of financial information because EMTALA protections no longer apply once a patient is stabilized.

Patient Logs

Hospitals are required to maintain a log on each individual who comes to the emergency department seeking assistance and whether he or she:

- Refused treatment,
- Was refused treatment,
- Was transferred (stabilized or un-stabilized),
- Was admitted, or
- Was treated and released/discharged.

The purpose of the log is to track the care provided to each individual who comes to the hospital seeking care for an emergency medical condition. Each hospital has the discretion to maintain the log in a form that best meets the needs of the hospital. The log includes, directly or by reference, patient logs from other areas of the hospital that may be considered dedicated emergency departments, such as pediatrics and labor and delivery where a patient might present for emergency services or receive a medical screening examination instead of in the “traditional” emergency department.

Medical Screening Exams (MSE)

An EMTALA obligation is triggered when an individual comes to a hospital’s dedicated emergency department and a request for treatment is made by the individual or on the individual’s behalf. Additionally, EMTALA would apply if a prudent layperson observer would conclude from an individual’s appearance or behavior that there was a need for an examination or treatment of a medical condition.

When a hospital has an EMTALA obligation, it must screen the individual to determine if an EMC exists. It is not appropriate to merely “log in” an individual and not provide a MSE. Individuals coming to the emergency department must be provided a MSE beyond initial triaging. Triaging is not equivalent to a medical

screening examination. Triage merely determines the “order” in which individuals will be seen, not the presence or absence of an emergency medical condition.

Under EMTALA, each hospital must formally determine who is qualified to perform the initial medical screening examinations, i.e., qualified medical person.

While it is permissible for a hospital to designate a non-physician practitioner as the qualified medical person, the designated non-physician practitioners must be set forth in a document that is approved by the governing body of the hospital. Those health practitioners designated to perform medical screening examinations are to be identified in the hospital by-laws or in the rules and regulations governing the medical staff following governing body approval. It is not acceptable for the hospital to allow the medical director of the emergency department to make what may be informal personnel appointments that could frequently change.

An MSE is the process required to reach with reasonable clinical confidence, the point at which it can be determined whether a medical emergency does or does not exist. If a hospital applies in a nondiscriminatory manner (i.e., a different level of care must not exist based on payment status, race, national origin) a screening process that is reasonably calculated to determine whether an EMC exists, it has met its obligations under the EMTALA.

Depending on the individual’s presenting symptoms, the MSE represents a spectrum ranging from a simple process involving only a brief history and physical examination to a complex process that also involves performing ancillary studies and procedures such as (but not limited to) lumbar punctures, clinical laboratory tests, CT scans, and/or diagnostic tests and procedures.

A MSE is not an isolated event; it is an ongoing process. The record must reflect continued monitoring according to the patient’s needs until he/she is stabilized or appropriately transferred. Documentation of this evaluation must be placed in the medical record prior to discharge or transfer.

Once the individual is screened and it is determined the individual has presented to the ED for a non-emergency purpose, the hospital’s EMTALA obligation ends for that individual at the completion of the MSE. Hospitals are not obligated under EMTALA to provide screening services beyond those needed to determine that there is no EMC.

Stabilizing Treatment

After the medical screening has been implemented and the hospital has determined that an emergency medical condition exists, the hospital must provide stabilizing treatment within its capability and capacity.

The regulation sets the standard for determining when a patient is stabilized. If a hospital is unable to stabilize an individual within its capability, an appropriate transfer should be implemented. To be considered stable the emergency medical condition that caused the individual to seek care in the dedicated ED must be resolved, although the underlying medical condition may persist.

EMTALA defines stabilized to mean “... that no material deterioration of the condition is likely, within reasonable medical probability, to result from, or occur during, the transfer of the individual from a facility...”

For example, an individual presents to a hospital complaining of chest tightness, wheezing, and shortness of breath and has a medical history of asthma. The physician completes a medical screening examination and diagnoses the individual as having an asthma attack that is an emergency medical condition. Stabilizing treatment is provided (medication and oxygen) to alleviate the acute respiratory symptoms.

In this scenario the EMC was resolved and the hospital’s EMTALA obligation is therefore ended, but the underlying medical condition of asthma still exists. After stabilizing the individual, the hospital no longer has an EMTALA obligation. The physician may discharge the individual home, admit him/her to the hospital, or transfer (the “appropriate transfer” requirement under EMTALA does not apply to this situation since the individual has been stabilized) the individual to another hospital depending on his/her needs.

To comply with the MSE and stabilization requirements of EMTALA, all individuals with similar medical conditions are to be treated consistently. If community wide plans exist for specific hospitals to treat certain EMCs (e.g., psychiatric, trauma, physical or sexual abuse), the hospital must meet its EMTALA obligations (screen, stabilize, and or appropriately transfer) prior to transferring the individual to the community plan hospital. An example of a community wide plan would be a trauma system hospital. In this respect, a sending hospital’s appropriate transfer of an individual in accordance with community wide protocols in instances where it cannot provide stabilizing treatment would be deemed to indicate compliance with EMTALA.

Patients Requiring Pre-Approval for Treatment from Managed Care Plans

If an individual seeking emergency care is a member of a managed health care plan (e.g., HMO, PPO or CMP), the hospital is still obligated to comply with the requirements of EMTALA. As with any other patient, the hospitals is obligated to

provide the services necessary to determine if an EMC is present and provide stabilizing treatment if indicated. This is true regardless of whether the individual is enrolled in a managed care plan that restricts its enrollees' choice of health care provider. EMTALA is a requirement imposed on hospitals, and the fact that an individual who comes to the hospital is enrolled in a managed care plan that does not contract with that hospital has no bearing on the obligation of the hospital to conduct an MSE and to initiate stabilizing treatment.

Medically Appropriate Transfers

EMTALA defines a transfer as "... the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead or leaves the facility without the permission of any such person. If discharge would result in the reasonable medical probability of material deterioration of the patient, the emergency medical condition should not be considered to have been stabilized."

Hospitals are responsible for treating and stabilizing, within their capacity and capability, any individual who presents him/herself to a hospital with an EMC. The hospital must provide care until the condition ceases to be an emergency or until the individual is properly transferred to another facility. An inappropriate transfer or discharge of an individual with an EMC would be a violation of EMTALA.

All transfers must include certification by the treating physician that the benefits of the transfer outweigh the risks. If the treating physician is in doubt that an individual's EMC is stabilized the physician should implement an appropriate transfer to prevent a potential violation of EMTALA, if his/her hospital cannot provide further stabilizing treatment.

If a hospital is alleged to have violated EMTALA by transferring an unstable individual without implementing an appropriate transfer according to EMTALA protocols, and the hospital believes that the individual was stable (EMC resolved) the burden of proof is the responsibility of the transferring hospital.

Psychiatric patients are considered stable when they are protected and prevented from injuring or harming him/herself or others. The administration of chemical or physical restraints for purposes of transferring an individual from one facility to another may stabilize a psychiatric patient for a period of time and remove the immediate EMC but the underlying medical condition may persist and if not treated for longevity the patient may experience exacerbation of the EMC. Therefore, practitioners should use great care when determining if the medical condition is in fact stable after administering chemical or physical restraints.

EMTALA requires hospitals to maintain medical and other records related to individuals transferred to or from the hospital for a period of 5 years from the date of transfer. Such records must be retained in their original or legally reproduced form in hard copy, microfilm, microfiche, optical disks, computer disks, or computer memory. In addition, hospitals are required to maintain a log of all medically necessary transfers.

Hospitals are required to report to CMS or the State survey agency promptly when they suspect they may have received an improperly transferred individual. Notification should occur within 72 hours of the occurrence. Failure to report improper transfers may subject the receiving hospital to termination of its provider agreement.

On-Call Lists

Hospitals have the ultimate responsibility for ensuring adequate on-call coverage in their emergency departments. Hospitals participating in the Medicare Program must maintain a list of physicians on-call for duty (after the initial examination) to provide treatment necessary to stabilize an individual with an EMC. Hospitals have an EMTALA obligation to provide on-call coverage for patients in need of specialized treatment if the hospital has the capacity to treat the individual.

A hospital can meet its responsibility to provide adequate medical personnel to meet its anticipated emergency needs by using on-call physicians either to staff or to augment its emergency department, during which time the capability of its emergency department includes the services of its on-call physicians.

CMS does not have requirements regarding how frequently on-call physicians are expected to be available to provide on-call coverage. Nor is there a pre-determined ratio CMS uses to identify how many days a hospital must provide medical staff on-call coverage based on the number of physicians on staff for that particular specialty. In particular, CMS has no rule stating that whenever there are at least three physicians in a specialty, the hospital must provide 24-hour / 7-day coverage in that specialty.

On-call coverage is a decision made by hospital administrators and the physicians who provide on-call coverage for the hospital. Each hospital has the discretion to maintain the on-call list in a manner that best meet the needs of the hospital's patients who are receiving services required under EMTALA in accordance with the resources available to the hospital, including the availability of on-call physicians.

No physician is required to be on-call at all times. On-call coverage should be provided for within reason depending upon the number of physicians in a specialty. A

determination about whether a hospital is in compliance with these regulations must be based on the facts in each individual case.

Use of Emergency Department for Non-emergency Services

If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

For a hospital to be exempted from its EMTALA obligations to screen individuals presenting at its emergency department for non-emergency tests (e.g., individual has consulted with physician by telephone and the physician refers the individual to a hospital emergency department for a non-emergency test) the hospital must be able to document that it is only being asked to collect evidence, not analyze the test results, or to otherwise examine or treat the individual. Furthermore, a hospital may be exempted from its EMTALA obligations to screen individuals presenting to its dedicated emergency department if the individual had a previously scheduled appointment.

If an individual presents to an ED and requests pharmaceutical services (medication) for a medical condition, the hospital generally would have an EMTALA obligation. Surveyors are encouraged to ask probing questions of the hospital staff to determine if the hospital in fact had an EMTALA obligation in this situation (e.g., did the individual present to the ED with an EMC and informed staff they had not taken their medication? Was it obvious from the nature of the medication requested that it was likely that the patient had an EMC?). The circumstances surrounding why the request is being made would confirm if the hospital in fact has an EMTALA obligation.

If the individual requires the medication to resolve or provide stabilizing treatment of an EMC, then the hospital has an EMTALA obligation. Hospitals are not required by EMTALA to provide medication to individuals who do not have an EMC simply because the individual is unable to pay or does not wish to purchase the medication from a retail pharmacy or did not plan appropriately to secure prescription refills.

If an individual presents to a dedicated emergency department and requests services that are not for a medical condition, such as preventive care services (immunizations, allergy shots, flu shots) or the gathering of evidence for criminal law cases (e.g., sexual assault, blood alcohol test), the hospital is not obligated to provide a MSE under EMTALA to this individual.

Attention to detail concerning blood alcohol testing (BAT) in the ED is instrumental when determining if a MSE is to be conducted. If an individual is brought to the ED and law enforcement personnel request that emergency department personnel draw blood for a BAT only and does not request examination or treatment for a medical condition, such as intoxication and a prudent lay person observer would not believe that the individual needed such examination or treatment, then the EMTALA's screening requirement is not applicable to this situation because the only request made on behalf of the individual was for evidence. However, if for example, the individual in police custody was involved in a motor vehicle accident or may have sustained injury to him or herself and presents to the ED a MSE would be warranted to determine if an EMC exists.

When law enforcement officials request hospital emergency personnel to provide clearance for incarceration, the hospital has an EMTALA obligation to provide a MSE to determine if an EMC exists. If no EMC is present, the hospital has met its EMTALA obligation and no further actions are necessary for EMTALA compliance.

Refusal to consent to treatment

A hospital meets the requirements of EMTALA with respect to an individual if the hospital offers the individual the further medical examination and treatment and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

EMTALA Summary

In summary, hospitals with dedicated emergency departments are required to take the following measures:

- Adopt and enforce policies and procedures to comply with the requirements of EMTALA;
- Post signs in the dedicated ED specifying the rights of individuals with emergency medical conditions and women in labor who come to the dedicated ED for health care services, and indicate on the signs whether the hospital participates in the Medicaid program;
- Maintain medical and other records related to individuals transferred to and from the hospital for a period of five years from the date of the transfer;
- Maintain a list of physicians who are on-call to provide further evaluation and or treatment necessary to stabilize an individual with an emergency medical condition;
- Maintain a central log of individual's who come to the dedicated ED seeking treatment and indicate whether these individuals:
 - Refused treatment,
 - Were denied treatment,
 - Were treated, admitted, stabilized, and/or transferred or were discharged;
 - The individual (or person acting on his or her behalf) after being informed of the risks and the hospital's obligations requests a transfer,
- Provide an appropriate MSE to any individual who comes to the emergency department;
- Provide necessary stabilizing treatment to an individual with an EMC or an individual in labor;
- Provide an appropriate transfer of an unstabilized individual to another facility if:
 - A physician has signed the certification that the benefits of the transfer of the patient to another facility outweigh the risks or
 - A qualified medical person has signed the certification after a physician, in consultation with that qualified medical person, has made the determination that the benefits of the transfer outweigh the risks and the physician countersigns in a timely manner the certification.
- Provide treatment to minimize the risks of transfer;
- Send all pertinent records to the receiving hospital;
- Obtain the consent of the receiving hospital to accept the transfer,
- Ensure that the transfer of an unstabilized individual is effected through qualified personnel and transportation equipment, including the use of medically appropriate life support measures;
- Medical screening examination and/or stabilizing treatment is not to be delayed in order to inquire about payment status;
- Accept appropriate transfer of individuals with an emergency medical condition if the hospital has specialized capabilities or facilities and has the capacity to treat those individuals; and
- Not penalize or take adverse action against a physician or a qualified medical person because the physician or qualified medical person refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee who reports a violation of these requirements.